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11  
12 UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION  
15

16 SEMICONDUCTOR COMPONENTS  
INDUSTRIES, L.L.C. (dba ON  
17 Semiconductor),

18 Plaintiff,

19 v.

20 I2A TECHNOLOGIES, INC., and  
21 VICTOR BATINOVICH,

22 Defendants.  
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Case No. CV 10-603 TEH

**NOTICE OF MOTION AND  
PLAINTIFF SEMICONDUCTOR  
COMPONENTS INDUSTRIES,  
L.L.C.'S MOTION FOR SUMMARY  
JUDGMENT ON COMPENSATORY  
DAMAGES PURSUANT TO FED. R.  
CIV. P. 56(c); MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

Date: November 22, 2010  
Time: 10:00 a.m.  
Crm.: Courtroom 12, 19th Floor  
Before: Hon. Thelton E. Henderson

1 TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF  
2 RECORD:

3 PLEASE TAKE NOTICE that, on November 22, 2010 at 10:00 a.m., or as soon thereafter  
4 as the matter may be heard by the Honorable Thelton E. Henderson, presiding in Courtroom 12,  
5 on the nineteenth floor of the United States District Court for the Northern District of California,  
6 located at 450 Golden Gate Avenue, San Francisco, California 94102, Plaintiff Semiconductor  
7 Components Industries, L.L.C. ("ON Semiconductor") will, and hereby does, move the Court,  
8 pursuant to Federal Rule of Civil Procedure 56(c), for an order granting its Motion for Summary  
9 Judgment on Compensatory Damages against Defendants I2A Technologies, Inc. and Victor  
10 Batinovich (collectively, "Defendants"). This Motion is made on the grounds that, as revealed on  
11 the face of the pleadings, there is no genuine issue of material facts as to the damages Defendants  
12 owe to ON Semiconductor as result of their unjust enrichment and conversion of ON  
13 Semiconductor's property.

14 The Motion is based on this Notice of Motion and Motion, the Memorandum of Points  
15 and Authorities in support hereof, as well as the pleadings and papers on file in this litigation, and  
16 such other and further arguments as may be permitted at the hearing on the Motion.

17  
18 DATED: October 18, 2010

**PERKINS COIE LLP**

19  
20 By: /s/ Michael A. Oblon  
Michael A. Oblon

21 Attorney for Plaintiff  
22 SEMICONDUCTOR COMPONENTS  
23 INDUSTRIES, L.L.C.  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiff Semiconductor Components Industries, L.L.C. (“ON Semiconductor”), through its undersigned counsel, respectfully submits its Memorandum of Points and Authorities in Support of its Motion for Summary Judgment for Damages on Compensatory Damages, against Defendants I2A Technologies, Inc. (“I2A”) and Victor Batinovich (collectively, “Defendants”). On July 30, 2010, this Court entered an Order holding the Defendants jointly liable for unjust enrichment and conversion of ON Semiconductor’s property. *See* Order Granting in Part and Denying in Part Plaintiff’s Motion for Judgment on the Pleadings, Case Number 10-cv-603, Docket No. 41 (“Order”). At ON Semiconductor’s request, the Court dismissed as moot the only remaining count (tortious interference). Thus, the only remaining issue in this case is ON Semiconductor’s damages. As discussed below, because there are no material issues of fact related to the amount of compensatory damages Defendants owe to ON Semiconductor, Plaintiff respectfully requests this Court to grant its Motion for Summary Judgment and enter a final order awarding ON Semiconductor \$396,114.98 plus prejudgment interest.

**II. STATEMENT OF FACTS**

**A. Wire Transfer**

On December 18, 2009, ON Semiconductor mistakenly wired \$613,649.46 to I2A’s bank account. Declaration of Jeff Anderson (“Anderson Dec.”) ¶ 3, Exhibit 1. (ON Semiconductor had intended to send these funds to one of its other vendors, and not to I2A). *Id.*

ON Semiconductor discovered the mistake on January 4, 2010, and immediately telephoned and sent e-mails and letters to I2A on January 6, 2010, January 13, 2010, and January 29, 2010 to explain that the payment was a mistake and to arrange for I2A immediately to return the funds. Anderson Dec. ¶ 4, Exhibit 2. Defendants have refused to return the \$613,649.46 but, instead, have made occasional partial repayments totaling only \$205,000. Defendants transferred \$50,000 on February 9, 2010, \$30,000 on February 10, 2010, \$50,000 on April 1, 2010, \$50,000 on June 1, 2010 and \$25,000 on July 30, 2010. Anderson Dec. ¶ 6, Exhibit 3. This leaves \$408,649.46 still due.

ON Semiconductor currently owes I2A Technologies five outstanding payments for \$2,007.36, \$1, 216.00, \$1,570.80, \$3,236.00, and \$4,504.32, totaling \$12,534.48. Anderson Dec. ¶ 8, Exhibit 4. Deducting the \$12,534.48 from the \$408,649.46, Defendants owe ON Semiconductor \$396,114.98. Anderson Dec. ¶ 9.

### III. LEGAL ARGUMENT

#### A. Standard for Summary Judgment

Federal Rule of Civil Procedure 56(c) provides that summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To meet its burden on a summary judgment motion, a plaintiff need only show that the evidence is so one-sided that it must prevail as a matter of law. *See Coming Up, Inc. v. City and County of San Francisco*, 830 F. Supp. 1302, 1306 (N.D. Cal., Aug. 6, 1993). “The mere existence of a scintilla of evidence” in support of the non-moving party’s position is insufficient. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-252 (1986). The opposing party must “come forward with sufficiently ‘specific’ facts from which to draw reasonable inferences about other material facts that are necessary elements of the non-moving party’s claim.” *Triton Energy Corp. v. Square D Co.*, 68 F.3d 1216, 1222 (9th Cir. 1995).

#### B. Defendants Are Liable to ON Semiconductor For Compensatory Damages Totaling \$396,114.98.

Damages caused by the wrongful conversion of property include 1) the value of the property from the time of the conversion, with interest from that time; and 2) a fair compensation for the time and money properly expended in pursuit of the property. Cal. Civ. Code § 3336; *see also Minor v. Christie's Inc.*, 2010 WL 2735040, \*6 (N.D. Cal., July 12, 2010).

Conversion occurred on January 6, 2010, when ON Semiconductor sent an email to Paulinus Nlemigbo, an I2A employee, advising him of the mistake and requesting that Defendants immediately return all of the funds. Anderson Dec. ¶ 4, Exhibit 2. Defendants failed to do so. Deducting from the \$613,496.46 transferred to I2A, (a) the \$205,000 already repaid,

1 plus (b) the \$12,534.48 that ON Semiconductor owes I2A, the value of the property is  
 2 \$396,114.98, plus damage, as described below.

3 **C. Defendants Should Pay ON Semiconductor Prejudgment Interest.**

4 Every person who is entitled to recover damages certain, or capable of being made certain  
 5 by calculation, and who had the right to recover damages vested in him on a particular day, is  
 6 entitled to recover interest from the date the right to recover vested. *See* Cal. Civ. Code §  
 7 3287(a). The Court's Order states that "the conversion occurred when Plaintiff approached . . .  
 8 Defendants that had control over the money deposited in the accounts, asked for the money to be  
 9 returned, and was refused." Order at 4:27-5:2. Therefore, ON Semiconductor has a right to  
 10 recover interest from January 6, 2010, the date when ON Semiconductor first contacted  
 11 Defendants to request the return of its \$613,496.46. *See* Anderson Dec. ¶ 4, Exhibit 2.

12 Absent any statute to the contrary, prejudgment interest runs at the constitutional rate of 7  
 13 percent. *Pacific-Southern Mortg. Trust Co. v Ins. Co. of N. Am.*, 166 Cal. App. 3d 703, 716  
 14 (1985). *See also* Cal. Const., art. XV, § 1. Under federal statute 28 U.S.C. section 1961(a),  
 15 where interest is allowed on any money judgment in a civil case recovered in district court,  
 16 interest shall be calculated at a rate equal to the weekly average 1-year constant maturity Treasury  
 17 yield, as published by the Board of Governors of the Federal Reserve System. 28 U.S.C. §  
 18 1961(a). Therefore, ON Semiconductor respectfully requests the Court to award to ON  
 19 Semiconductor prejudgment interest from the date the conversion occurred, January 6, 2010, to  
 20 the date of this Court's order, at the rate of 7% or the rate provided under 29 U.S.C. section  
 21 1961(a), which ever is higher.

22 **IV. CONCLUSION**

23 For the foregoing reasons, ON Semiconductor requests the Court grant its Motion for  
 24 Summary Judgment on Compensatory Damages and order Defendants to pay ON Semiconductor  
 25 \$396,114.98, plus prejudgment interest and leave the issue of punitive damages to be resolved at  
 26 trial.

1 DATED: October 18, 2010

**PERKINS COIE LLP**

2 By: /s/ Michael A. Oblon

3 Michael A. Oblon

4 Attorney for Plaintiff  
5 SEMICONDUCTOR COMPONENTS  
6 INDUSTRIES, L.L.C.

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